

U.S. Serial No. 10/608,327

Response to the Office action of September 29, 2005

Remarks

In the Office action, claims 1-7, 10, and 11-15 were rejected as being unpatentable Sochava (US 6,665,321). As addressed below, Sochava is not available as prior art to the subject application for obviousness purposes. Because Sochava is not available as prior art, we do not address how the disclosure of Sochava affects the patentability of the pending claims.

The Office action does not indicate the subsection of 35 U.S.C. § 102 under which Sochava is prior art to the subject application. Sochava issued on December 16, 2003, from an application filed on December 31, 2002. The subject application was filed on June 27, 2003. The face of Sochava does not evidence that the subject matter of Sochava was known or used by others in this country, or patented or described in a printed publication in this or a foreign country before June 27, 2003 (the presumed date of invention of the subject application), and, thus, Sochava does not provide any indication of being prior art under 35 U.S.C. § 102(a). Additionally, Sochava published on December 16, 2003, which is after the filing date of the subject application and, therefore, the publication of Sochava cannot be prior art under 35 U.S.C. § 102(b).

Thus, Sochava is facially prior art to the subject application under 35 U.S.C. § 102(e) because Sochava was filed before the subject application. However, Sochava is being used to reject the claims of the present application under 35 U.S.C. § 103, as being obvious. This is not permitted by 35 U.S.C. § 103(c), which states that "subject matter developed by another person, which qualifies as prior art only under one more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The application and the reference were, at the time the invention was made, owned by or subject to an obligation of assignment to Intel Corporation. Thus, Sochava is not available as prior art for obviousness purposes.

Because Sochava is not available as prior art for purposes of obviousness, it is respectfully submitted that rejections in the Office action mailed September 29, 2005, should

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be withdrawn and either the case should be allowed or a second non-final Office should be issued.

The undersigned notes that the Form PTO-892 included with the Office action of September 29, 2005, listed a number of references, but failed to list patent US 6,700,904, which the examiner had previously brought to the attention to the undersigned in an electronic mail dated April 20, 2005. The undersigned asks the examiner to please issue a supplemental Form PTO-892, or to otherwise acknowledge that US 6,700,904 has been considered in the subject application. The undersigned contends that Intel Corporation should not have to pay a fee under 1.97 for the consideration of this patent because it was the examiner who made the undersigned aware of this patent. The undersigned presumed that the examiner would list all relevant art from the electronic mail on the Form PTO-892; however, it appears that US 6,700,904 was inadvertently omitted.

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,

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